

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1128-11  
Bill No.: Truly Agreed to and Finally Passed SS for SCS for HS for HB 381  
Subject: Children and Minors; Tobacco and Tobacco Products; Revenue Dept.; Crimes and Punishment; Attorney General; Highway Patrol  
Type: Original  
Date: May 21, 2001

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>
General Revenue	(\$784,329)	(\$779,161)	(\$799,396)
<b>Total Estimated Net Effect on <u>All</u> State Funds*</b>	<b>(\$784,329)</b>	<b>(\$779,161)</b>	<b>(\$799,396)</b>

**\*Does not include unknown savings for possible reduced foundation formula payments or unknown loss for cigarette sales tax refunds.**

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>
None			
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 7 pages.

## FISCAL ANALYSIS

### ASSUMPTION

Officials of the **Department of Public Safety (DPS)** state the proposed legislation does not provide for a tobacco registration fee. DPS further assumes it will require 1 FTE Tobacco Program Manager (\$49,140); 6 FTE Agents (\$39,048); 3 FTE Clerk IV (\$25,956); and the related equipment and expense for each position, to enforce and administer the tobacco provisions provided by this act.

Officials of the **Missouri State Highway Patrol (MHP) and the Attorney General's Office (AGO)** state this proposal would have minimal or no fiscal impact to their agencies and any costs involved could be absorbed. MHP's Division of Drug and Crime Control assumes most investigative work associated with this legislation would remain at the police level and not involve Highway Patrol investigators. However, if the Patrol were to become more involved, the Patrol would require 3 additional investigators to handle requested investigations.

In a similar proposal, officials of the **Office of State Courts Administrator (CTS)** and the **Office of Prosecution Services (OPS)** stated this proposal would have minimal or no fiscal impact to their agencies and any costs involved could be absorbed.

Officials from the **Office of Administration, Budget and Planning (BAP)** assume this legislation should not result in additional costs or savings to BAP. There could be impact on total state revenue.

Officials from the **Office of the State Public Defender (SPD)** assume existing staff could provide representation for those 1-5 cases arising where indigent persons were charged with fraudulent tax stamp utilization. However, SPD assumes passage of more than one similar bill would require the SPD to request increased appropriations to cover cumulative cost of representing the indigent accused in the additional cases.

In a similar response, officials from the **Department of Corrections (DOC)** assumed this proposal would have zero to minimal fiscal impact to its agency. DOC stated the need for additional capital improvements is not anticipated at this time. However the cumulative effect of various new legislation, if passed into law, could result in the need for additional capital improvements funding if the total number of new offenders exceeds current planned capacity.

Currently, DOC cannot predict the number of new commitments which may result from the creation of the offenses outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court. If additional persons are sentenced to the custody of DOC due to the provisions of this legislation, DOC will incur a corresponding increase in operational cost either through incarceration (FY99 average of \$35.61

ASSUMPTION (Continued)

per inmate, per day) or through supervision provided by the Board of Probation and Parole (FY99 average of \$2.47 per offender, per day).

The following factors contribute to DOC's minimal assumption: DOC assumes the narrow scope of the crime will not encompass a large number of offenders; the low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence; and the probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

In summary, supervision by DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials of the **Department of Revenue (DOR)** state this legislation, as written, would create a felony for the sale or distribution of gray market cigarettes. DOR is to revoke or suspend license of any wholesaler in violation of the legislation.

DOR currently does not have field enforcement of tobacco laws. During the last session in response to Fiscal Note 3838-02 and again in Fiscal Note 1040-01 this session, it was noted that other states have brought forward a very important point. That point is that for a state to fully participate in the Master Tobacco Settlement that state must use due diligence to enforce their law and all areas of the agreement. DOR also noted that gray market cigarettes will impact the cigarette sales and therefore will impact the state's "diligently enforce" of the Master Tobacco Settlement if enforcement is not funded in this legislation.

DOR assumes the revenue impact is unknown, but a failure on Missouri's part to use due diligence to enforce the tobacco agreement could cause a loss of a portion of the settlement funds. DOR assumes Section 149.015 (4) would be an unknown loss to GR. DOR hasn't done refunds on this since it was taken out of the language in 1994. Any revenue impact is unknown.

DOR assumes the Division of Taxation will be responsible for the revoking or suspension of license of the wholesalers if they are violating the cigarette statutes.

DOR has become aware that for a state to fully participate in the tobacco settlement agreement they must use due diligence to enforce the agreement and the state's tobacco laws. Therefore, DOR needs to have a field enforcement presence as well as the ability to fully track all payments from both the participants and those who chose not to participate and to make payments to the escrow fund. DOR notes the need to closely watch the grey market area of sales since it is quickly becoming a black market.

ASSUMPTION (Continued)

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To properly enforce Missouri's tobacco laws as required by Sections 142.900 to 149.215, the DOR will require 4 field agents and 2 tax audit analysts. The field agents will be responsible for closely checking each retailer of tobacco products in this state, seize unlawful product, and require that all taxes that are due are paid. The two tax audit analysts would be responsible for coordination of field agent activity, and an audit process to be certain that both the participants and non-participants make proper payments.

Section 407.934 requires the sellers of cigarettes or tobacco products to have a retail sales tax license as well as be registered to sell tobacco products (DOR issues a registration certificate). In Section 407.931 the Division of Liquor Control is given power to suspend cigarette/tobacco registrations. If DOR is required to track this suspension on the MITS (Sales Tax Mainframe System) a subsystem will be need to develop with the capability to open and close cigarette/tobacco sellers and indicate if the cigarette/tobacco registration is revoked as well as an information screen to view if the account is revoked, open or closed. This development will require 8,304 hours of programming at a total cost of \$288,047. The state data center costs will be \$55,730.

**Oversight** assumes DOR can make any programming changes needed with existing resources. State date center costs of \$55,730 have been allowed. Oversight assumes the revenue loss for cigarette sales tax refunds will be minimal and has not shown any impact to the General Revenue Fund. Oversight notes that increases in fines which would go to school districts would be offset by reduced payment to those districts through the State Foundation Formula.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
<b>GENERAL REVENUE FUND</b>			
<u>Costs - Department of Revenue</u>			
Personal Service (6 FTE)	(\$115,140)	(\$141,622)	(\$145,163)
Fringe Benefits	(\$38,376)	(\$47,203)	(\$48,383)
Expense and Equipment	(\$51,775)	(\$14,641)	(\$15,080)
Programming	(\$55,730)	\$0	\$0
Total <u>Costs</u> - DOR	(\$261,021)	(\$203,466)	(\$208,626)
<u>Costs - Department of Public Safety</u>			
Salaries (10 FTE)	(\$308,607)	(\$379,587)	(\$389,076)
Fringe Benefits	(\$102,859)	(\$126,516)	(\$129,679)
Equipment and Expense	(\$111,842)	(\$69,592)	(\$72,015)
Total Costs - DPS	(\$523,308)	(\$575,695)	(\$590,770)
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*</b>	<b><u>(\$784,329)</u></b>	<b><u>(\$799,161)</u></b>	<b><u>(\$799,396)</u></b>

\*Does not include unknown savings for possible reduced foundation formula payments or unknown loss for cigarette sales tax refunds.

<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
<b>SCHOOL DISTRICTS</b>			
<u>Income</u> - Fines	Unknown	Unknown	Unknown
<u>Loss</u> - Reduction in state payments	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>TOTAL ESTIMATED NET EFFECT ON SCHOOL DISTRICTS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This substitute makes changes to statutes concerning the sale of tobacco products. The substitute:

- (1) Prohibits any refund to a cigarette retailer of sales tax illegally or erroneously overcharged on the amount of any cigarette excise tax included in the retail price of cigarettes, unless the overcharge is refunded to the person who paid the tax. If the illegal or erroneous overcharge on the amount of any cigarette excise tax is not refunded to the person who paid the tax, it will be retained by the Director of the Department of Revenue (Section 149.015, RSMo);
- (2) Bans the sale and distribution of "gray market cigarettes." Gray market cigarettes are cigarettes that are packaged for sale outside the United States and may not contain required health warnings and ingredient lists. These cigarettes may also be distributed under names and packages similar to cigarettes manufactured for sale in the United States. Persons are prohibited from affixing any stamp or meter impressions to gray market cigarettes. Persons violating this law are guilty of a class D felony. The substitute allows the Director of the Department of

DESCRIPTION (continued)

Revenue to revoke or suspend the license of a wholesaler who violates this law. In addition, the director may impose a civil penalty not greater than 500% of the retail value of the cigarettes involved or \$5,000. Gray market cigarettes sold or distributed in violation of this law are

considered contraband and subject to seizure and forfeiture. In addition, violations are subject to remedies or penalties available for a violation of unlawful trade practices. This law is to be enforced by the Director of Revenue through the State Highway Patrol and all local police authorities. The Attorney General has concurrent enforcement power with the prosecuting attorneys of the state. Persons violating this law are subject to civil action by persons who are economically injured by the violation (Section 149.200-215);

(3) Gives the Division of Liquor Control authority to enforce laws related to the control and sale of tobacco and requires the division to submit an annual report on the effectiveness of cigarette control laws to the General Assembly (Section 407.924);

(4) Requires vendors to deny the sale of tobacco products to persons believed to be less than 18 years of age and adds a penalty for sales on the Internet or by mail of tobacco to anyone under the age of 18 (Section 407.926);

(5) Requires vendors to post a sign stating that it is a violation of state law for tobacco products to be provided to persons under 18, and it is a violation for persons under 18 to possess or purchase tobacco products. Currently, a sign is required stating only that it is illegal to sell tobacco products to persons under 18 (Section 407.927);

(6) Prohibits the sale of individual packages of tobacco products unless sold through a vending machine or from behind a checkout counter or within the unobstructed line of sight of the sales clerk (Section 407.928);

(7) Requires purchasers of tobacco products to present prescribed identification upon request to demonstrate age. The substitute makes it a class A misdemeanor to reproduce, alter, modify, or misrepresent a driver's license or identification card (Section 407.929);

(8) Requires, by January 1, 2002, vending machines to be equipped with a device that disables them until unlocked by a sales person. Vending machines located in areas where patrons must be over the age of 18 or in places not generally accessible to the general public are exempted from this requirement. The Division of Liquor Control may suspend the registration of any person in violation of this law (Section 407.931);

(9) Prohibits any person from providing or distributing any tobacco product, rolling papers, or individual cigarettes to any minor. The substitute outlines penalties for persons and establishments in violation of this law (Section 407.931);

#### DESCRIPTION (continued)

(10) Makes it illegal for a person under the age of 18 to purchase, attempt to purchase, or possess tobacco products unless in the course of employment. Persons under the age of 18 will have their tobacco products confiscated. For the first violation, the penalty is an infraction and

the person's tobacco products must also be confiscated. The penalty for a second or subsequent violation is an infraction. The person's tobacco products must also be confiscated, and the person must complete a tobacco education program, if available (Section 407.933);

(11) Requires persons who sell cigarettes to have a retail sales tax license and to be registered with the Department of Revenue to sell tobacco products in the state. Persons may register to sell tobacco products through the Internet or on any sales tax returns filed. Any establishment selling tobacco products without being registered is guilty of an infraction (Section 407.934);

(12) Requires the Department of Revenue to make available to the Division of Liquor Control and the Department of Mental Health a list of persons registered to sell tobacco products in the state (Section 407.934); and

(13) Gives the Division of Liquor Control the authority to inspect stores and tobacco outlets for compliance with all laws related to tobacco sales to minors. The division may not employ persons less than 17 years of age without parental consent for the purpose of inspection or enforcement of tobacco laws. The division must also establish rules for the use of minors when enforcing tobacco laws. The substitute outlines minimum standards for these rules.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

#### SOURCES OF INFORMATION

Office of Administration - Budget and Planning  
Department of Public Safety  
Office of State Courts Administrator  
Office of the State Public Defender  
Office of Prosecution Services  
Office of the Attorney General  
Department of Corrections  
Department of Revenue



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